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10 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,)

12 Plaintiff,)

13 v.)

14 WILLIAM E. KIVETT, JR. a.k.a.)
15 WILLIAM E. KIVETT; KAREN L.)
KIVETT; BANK OF AMERICA, N.A.;)
16 YAKIMA COUNTY; and DEUTSCHE)
BANK TRUST COMPANY)
17 AMERICAS, as trustee for the)
Certificateholders of Dover Mortgage)
18 Capital 2005-A Corporation, Grantor)
Trust Certificate, Series 2005-A,)

19 Defendants.)
20)

Case No. 1:15-CV-3122-LRS

**ORDER OF FORECLOSURE
AND JUDICIAL SALE**

Order of Foreclosure and Judicial
Sale
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U.S. DEPARTMENT OF JUSTICE
Tax Division, Western Region
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1 The Court has entered a Judgment and Order Granting Stipulated Motion for
2 Entry of Judgment and Closing File (“Judgment and Order”) that ordered, *inter*
3 *alia*, foreclosure of the United States’ tax liens against the real property commonly
4 known as 920 South 34th Avenue, Yakima, WA 98902 (referred to herein as the
5 “34th Avenue Property” and further described below in paragraph 3). *See* ECF No.
6 71 at 4, ¶¶ 5-6. This Order of Sale is entered pursuant to the provisions of 28
7 U.S.C. §§ 2001 and 2002 and 26 U.S.C. §§ 7402 and 7403. The Court hereby
8 orders as follows:

9 1. On October 12, 2017, the Court entered a Judgment and Order (ECF
10 No. 71) that ordered, in relevant part, the following:

11 a. The United States’ federal tax liens for individual income tax
12 liabilities (Form 1040) for taxable periods ending December 31, 2000,
13 through and including December 31, 2002 (“tax years at issue”), arising
14 from the assessments against William E. Kivett, Jr. a.k.a. William E. Kivett
15 and Karen L. Kivett (collectively the “Kivetts”) referenced in paragraph 33
16 of the Second Amended Complaint arose in favor of the United States on the
17 dates of assessments set forth in paragraph 33 of the Second Amended
18 Complaint (ECF No. 30 at 8), and attached to the 34th Avenue Property, of
19 which William E. Jr. and/or Karen L. Kivett hold an ownership interest,
20 pursuant to 26 U.S.C. §§ 6321 and 6322. *See* ECF No. 71 at 2, ¶ 1.

1 b. The federal tax liens for the Kivetts' individual income tax
2 liabilities for the tax years at issue attached to the 34th Avenue Property on
3 or before the filing of: (1) Mrs. Kivett's Chapter 7 Bankruptcy Petition in the
4 United States Bankruptcy Court for the Eastern District of Washington
5 (Case No. 10-05456-FLK7) on September 23, 2010; and (2) Mr. Kivett's
6 Chapter 7 Bankruptcy Petition in the United States Bankruptcy Court for the
7 Eastern District of Washington (Case No. 15-02809-FLK7) on August 17,
8 2015 (*See* ECF No. 30 at 10-11). *See* ECF No. 71 at 3, ¶ 2.

9 c. The United States has valid and subsisting tax liens against the
10 34th Avenue Property based on the Kivetts' unpaid federal individual
11 income tax liabilities for the tax years at issue with a total current balance of
12 \$394,962.18 as of August 30, 2017, plus additional interest and other
13 accruals thereafter as provided by law. The total current balance owed as of
14 August 30, 2017 consists of current balances as of August 30, 2017, of
15 \$46,902.51 for tax year 2000, \$233,306.40 for tax year 2001, and
16 \$114,753.27 for tax year 2002, plus additional interest and other accruals
17 thereafter as provided by law. These federal tax liens against the 34th
18 Avenue Property survive and are unaffected by any discharge entered in the
19 Kivetts' respective individual bankruptcies. *See* ECF No. 71 at 3-4, ¶ 3.

1 d. The United States' federal tax liens for the tax years at issue
2 against the 34th Avenue Property are foreclosed. *See* ECF No. 71 at 4, ¶ 5.

3 e. The United States is entitled to an Order of Foreclosure and
4 Judicial Sale of the 34th Avenue Property, with the terms of the Order of
5 Foreclosure and Judicial Sale to be within the sole discretion of the United
6 States. The United States will submit an Order of Foreclosure and Judicial
7 Sale of the 34th Avenue Property within 30 days of the entry of the Court's
8 Judgment. *See* ECF No. 71 at 4, ¶ 6.

9 2. The United States' federal tax liens for the tax years at issue against
10 the Kivetts encumbering the 34th Avenue Property are foreclosed, and the 34th
11 Avenue Property shall be sold pursuant to 26 U.S.C. § 7403 and 28 U.S.C. §§ 2001
12 and 2002.

13 3. The 34th Avenue Property upon which the United States is entitled to
14 foreclose its federal tax liens for the tax years at issue is commonly known as 920
15 South 34th Avenue, Yakima, WA 98902 is also identified as Yakima County
16 Assessor's Parcel No. 181327-14407 and legally described as:

17 LOT 8, BLOCK 1, ROSE PARK, ACCORDING TO THE OFFICIAL
18 PLAT THEREOF RECORDED IN VOLUME "O" OF PLATS,
19 PAGE 33, RECORDS OF YAKIMA COUNTY, WASHINGTON.
20 SITUATED IN YAKIMA COUNTY, STATE OF WASHINGTON.

See ECF No. 30 at 5-6, ¶ 20.

1 4. The United States Marshal for the Eastern District of Washington,
2 his/her representative, or an Internal Revenue Service (“IRS”) Property Appraisal
3 and Liquidation Specialist (“PALS”) representative is authorized and directed
4 under 28 U.S.C. §§ 2001 and 2002 to offer for public sale and to sell the 34th
5 Avenue Property, free and clear of the right, title and interest of all parties to this
6 action and any successors in interest or transferees of those parties. The United
7 States may choose either the United States Marshal or a PALS representative to
8 carry out the sales under this Order of Sale and shall make the arrangements for
9 any sale as set forth in this Order. This Order of Sale shall act as a special writ of
10 execution and no further orders or process from the Court shall be required.

11 5. The United States Marshal for the Eastern District of Washington,
12 his/her representative, or a PALS representative is authorized to have free access to
13 the 34th Avenue Property and to take all actions necessary to preserve the
14 property, including without limitation retaining a locksmith or other person to
15 change or install locks or other security devices on any part thereof, until a deed
16 thereto is delivered to the ultimate purchaser(s).

17 6. The terms and conditions of the sale are as follows:

18 a. Except as otherwise stated herein, the sale shall be by public
19 auction to the highest bidder, free and clear of all liens and interests;

1 b. The sale shall be subject to all laws, ordinances, and
2 governmental regulations (including building and zoning ordinances),
3 affecting the premises, and easements and restrictions of record, if any;

4 c. The sale shall be held at the Yakima County Courthouse, on the
5 34th Avenue Property's premises, or at any other place in accordance with
6 the provisions of 28 U.S.C. §§ 2001 and 2002, at a date and time announced
7 by the United States Marshal, his/her representative, or a PALS
8 representative;

9 d. Notice of the sale or sales shall be published once a week for at
10 least four consecutive weeks before the date fixed for the sale in at least one
11 newspaper regularly issued and of general circulation in Yakima County,
12 Washington, and, at the discretion of the Marshal, his/her representative, or a
13 PALS representative, by any other notice that it or its representative may
14 deem appropriate. State or local law notice requirements for foreclosures or
15 execution sales do not apply to these sales under federal law and state or
16 local law regarding redemption rights do not apply to these sales. The notice
17 or notices of sale shall describe the 34th Avenue Property and shall contain
18 the material terms and conditions of sale in this Order of Sale;

19 e. The minimum bid will be set by the IRS. If the minimum bid is
20 not met or exceeded, the Marshal, his or her representative, or a PALS

1 representative may, without further permission of this Court, and under the
2 terms and conditions in this Order of Sale, hold new public sales, if
3 necessary, and reduce the minimum bid, or sell to the highest bidder;

4 f. Bidders shall be required to DEPOSIT at the time of sale with
5 the Marshal, his/her representative, or a PALS representative, a minimum of
6 ten percent of the bid, with the deposit to be made by a certified or cashier's
7 check payable to the United States District Court for the Eastern District of
8 Washington. Before being permitted to bid at the sale, bidders shall display
9 to the Marshal, his/her representative, or a PALS representative satisfactory
10 proof of compliance with this requirement;

11 g. The balance of the purchase price of the 34th Avenue Property
12 in excess of the deposit tendered shall be paid to the Marshal or a PALS
13 representative (whichever person is conducting the sale) within thirty (30)
14 days after the date the bid is accepted by a certified or cashier's check
15 payable to the United States District Court for the Eastern District of
16 Washington. If the successful bidder or bidders fail(s) to fulfill this
17 requirement, the deposit shall be forfeited and shall be applied to cover the
18 expenses of the sale, including commissions due under 28 U.S.C. § 1921(c),
19 with any amount remaining to be applied to the Kivetts' federal tax

20 liabilities, described in Paragraph 1c, above. The 34th Avenue Property shall

1 be again offered for sale under the terms and conditions of this Order of Sale
2 or, in the alternative, sold to the second highest bidder or bidders. The
3 United States may bid as a credit against its judgment without tender of
4 cash;

5 h. The sale of the 34th Avenue Property shall not be final until
6 confirmed by this Court. The Marshal or a PALS representative shall file a
7 report of sale with the Court within thirty (30) days from the date of receipt
8 of the balance of the purchase price;

9 i. Upon confirmation of the sale, the Marshal or PALS
10 representative shall promptly execute and deliver a deed of judicial sale
11 conveying the 34th Avenue Property to the purchaser or purchasers;

12 j. Upon confirmation of the sale, the interests of, liens against, or
13 claims to the 34th Avenue Property held or asserted by all parties to this
14 action or any successors in interest or transferees of those parties shall be
15 discharged and extinguished. The sale is ordered pursuant to 28 U.S.C. §
16 2001. Redemption rights under state or local law shall not apply to this sale
17 under federal law; and

18 k. Upon confirmation of the sale, the purchaser or purchasers shall
19 have the recorder of deeds, Yakima County, Washington, cause transfer of
20 the 34th Avenue Property to be reflected upon that County's register of title.

1 7. Until the 34th Avenue Property is sold, the Kivetts shall take all
2 reasonable steps necessary to preserve the 34th Avenue Property (including all
3 buildings, improvements, fixtures and appurtenances thereon) including, without
4 limitation, maintaining fire and casualty insurance on the 34th Avenue Property.
5 The Kivetts shall not commit waste against the 34th Avenue Property, nor shall
6 they cause or permit anyone else to do so. The Kivetts shall not do anything that
7 tends to reduce the value or marketability of the 34th Avenue Property, nor shall
8 they cause or permit anyone else to do so. The Kivetts shall not record any
9 instruments, publish any notice, or take any other action that may directly or
10 indirectly tend to adversely affect the value of the 34th Avenue Property or that
11 may tend to deter or discourage potential bidders from participating in the public
12 sale, nor shall they cause or permit anyone else to do so. **Violation of this**
13 **paragraph shall be deemed a contempt of court and punishable as such.**
14 Should the Kivetts fail to comply with this paragraph, other Defendants in this case
15 who have a recognized property interest in the 34th Avenue Property may take
16 steps to protect the 34th Avenue Property by agreement or, if no agreement is
17 reached among the Defendants, by seeking further Court order.

18 8. All persons occupying the 34th Avenue Property shall leave and
19 permanently vacate the 34th Avenue Property no later than thirty (30) days after
20 the entry of this Order, each taking his or her personal property (but leaving all

1 improvements, buildings, fixtures, and appurtenances) when leaving and vacating.
2 If any person fails or refuses to leave and vacate the 34th Avenue Property by the
3 time specified in this Order, the United States Marshal's Office is authorized to
4 take whatever action it deems appropriate to remove such person or persons from
5 the premises, whether or not the sale of such property is being conducted by a
6 PALS representative. If any person fails or refuses to remove his or her personal
7 property from the 34th Avenue Property by the time specified herein, the personal
8 property remaining at the 34th Avenue Property thereafter is deemed forfeited and
9 abandoned, and the United States Marshal's Office or the PALS representative is
10 authorized and directed to remove and dispose of it in any manner they see fit,
11 including sale, in which case the proceeds of sale are to be applied first to the
12 expenses of sale, and then to the tax liabilities described in Paragraph 1c, above.

13 9. Notwithstanding the terms of the immediately preceding paragraph, if,
14 after the sale of the 34th Avenue Property is confirmed by this Court, the 34th
15 Avenue Property remains occupied, a writ of assistance may, without further
16 notice, be issued by the Clerk of Court to the purchasers thereof.

17 10. The Kivetts shall, if their address changes, file a forwarding address
18 with the Court within thirty (30) days of any such change, and serve a copy of the
19 same upon the United States and all other parties to this litigation. If the Kivetts, or
20 any other person(s) occupying the 34th Avenue Property, vacates the 34th Avenue

Property prior to the deadline set forth in paragraph 8, above, such person shall notify counsel for the United States no later than two (2) business days prior to vacating the property of the date on which he or she is vacating the property. Notification shall be made by contacting counsel for the United States, Yen Jeannette Tran, at (202) 616-3366.

11. The Marshal, his or her representative, or a PALS representative, shall deposit the amount paid by the purchaser or purchasers into the registry of the court. Upon appropriate motion for disbursement or stipulation of the parties, the Clerk will disburse the funds in the following order of preference, as determined by this Court (ECF No. 71 at 4, ¶ 6) and stipulations between:

(i) the United States and Yakima County filed on October 17, 2016 (ECF No. 41; *see also* ECF No. 45); and

(ii) the United States, Deutsche Bank Trust Company Americas, as trustee for the Certificateholders of Dover Mortgage Capital 2005-A Corporation, Grantor Trust Certificate, Series 2005-A (“Deutsche Bank”), and Bank of America, N.A. (“Bank of America”) filed on September 8, 2016 (ECF No. 38; *see also* ECF No. 44),

until these expenses and liens are satisfied or the proceeds are exhausted:

a. First, to the IRS, for allowed costs and expenses of sale,

including any commissions due under 28 U.S.C. § 1921(c) and including an
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1 amount sufficient to cover the costs of any steps taken to secure or maintain
2 the 34th Avenue Property pending sale and confirmation by the Court;

3 b. Second, to Yakima County, for any outstanding real property
4 taxes due and owing at the time of sale (*See* ECF Nos. 41 at 3, ¶ 8, 38 at 7,
5 ¶ 17);

6 c. Third, to Deutsche Bank Trust Company Americas, as trustee
7 for the Certificateholders of Dover Mortgage Capital 2005-A Corporation,
8 Grantor Trust Certificate, Series 2005-A (“Deutsche Bank”), for the balance
9 of the 34th Avenue Mortgage lien at the time of sale (*See* ECF No. 38 at 7,
10 ¶ 17);

11 d. Fourth, to the United States, for the balance of the federal tax
12 lien for federal income tax years 2001 and 2002 based on the Kivetts’ unpaid
13 federal individual income tax liabilities for tax years 2001 and 2002 (*See*
14 ECF No. 38 at 7, ¶ 17);

15 e. Fifth, to Bank of America, for the balance of the 34th Avenue
16 Line of Credit lien at the time of sale (*See* ECF No. 38 at 7, ¶ 17);

17 f. Sixth, to the United States, for the balance of the federal tax lien
18 for federal income tax year 2000 based on the Kivetts’ unpaid federal
19 individual income tax liabilities for tax year 2000 (*See* ECF No. 38 at 7, ¶
20 17); and

g. Any remainder to the Kivetts.

IT IS SO ORDERED.

DATED this 1st day of November, 2017.

s/Lonny R. Suko

LONNY R. SUKO
 SENIOR U. S. DISTRICT JUDGE

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 27th day of October, 2017, I electronically filed
3 the foregoing **[PROPOSED] ORDER OF FORECLOSURE AND JUDICIAL**
4 **SALE** with the Clerk of Court using the CM/ECF system, which will send
5 notification of such filing to the following:

6 Gregory L. Scott (gregory@scottlaw.net)
7 *Attorneys for William E. Kivett, Jr. a.k.a. William E. Kivett and Karen L. Kivett*

8 Nathan L. Smith (nathan@mclaw.org)
9 *Attorneys for Deutsche Bank Trust Company Americas, as trustee for the*
10 *Certificateholders of Dover Mortgage Capital 2005-A Corporation, Grantor Trust*
11 *Certificate, Series 2005-A and Bank of America, N.A.*

12 I further certify that on the same date, I caused a true and complete copy of
13 the foregoing document to be served by first-class mail, postage prepaid, to the
14 following persons and/or entities at the following addresses:

15 Daniel D. Clark
16 Deputy Prosecuting Attorney
17 128 N. 2nd St, Rm 211
18 Yakima, WA 98901-2639
19 *Attorneys for Yakima County*

20 s/ Yen Jeannette Tran

YEN JEANNETTE TRAN
Trial Attorney
United States Department of Justice, Tax Division